

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

9 ALFONSO JACKSON,)	
)	
10 Plaintiff,)	CV-N-05-0428-HDM(RAM)
)	
11 vs.)	ORDER
)	
12 JACKIE CRAWFORD, <i>et al.</i> ,)	
)	
13 Defendants.)	
)	
14 _____	/	

15 Plaintiff Jackson, a prisoner of the Nevada Department of
 16 Corrections (NDOC), has brought a civil action under 42 U.S.C. § 1983
 17 in relation to a serious jaw injury he allegedly suffered after being
 18 punched in the face by another inmate, Michael Doakes, at the Southern
 19 Desert Correctional Center (SDCC). According to Jackson, Doakes is
 20 a former professional boxer who was allowed to work in the prison as
 21 a boxing trainer by Sheryl Foster, the warden. Jackson claims that,
 22 during a training session, Doakes intentionally stepped on his foot
 23 and punched him in the face, breaking his jaw.

24 The magistrate judge screened Jackson's initial civil rights
 25 complaint pursuant to 28 U.S.C. § 1915(e) and determined that Jackson
 26 failed to state a claim for which relief may be granted. Docket #5.

1 The defect identified by the magistrate judge was that Jackson named
2 only Foster as a defendant and failed to allege facts showing that she
3 caused the alleged constitutional violation. *Id.* (citing *Taylor v.*
4 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

5 Pursuant to 28 U.S.C. § 1915(e)(2), a federal court must
6 dismiss a case in which *in forma pauperis* status is granted, "if the
7 allegation of poverty is untrue," or the action "is frivolous or
8 malicious," "fails to state a claim on which relief may be granted,"
9 or "seeks monetary relief against a defendant who is immune from such
10 relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for
11 failure to state a claim upon which relief may be granted is provided
12 for in Federal Rule of Civil Procedure 12(b)(6), and the court applies
13 the same standard under Section 1915 when reviewing the adequacy of
14 a complaint or amended complaint. Review under Rule 12(b)(6) is
15 essentially a ruling on a question of law. *See Chappel v. Laboratory*
16 *Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000).

17 Dismissal for failure to state a claim is proper only if it
18 is clear that the plaintiff cannot prove any set of facts in support
19 of the claim that would entitle him or her to relief. *See Morley v.*
20 *Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this
21 determination, the court takes as true all allegations of material
22 fact stated in the complaint and construes them in the light most
23 favorable to the plaintiff. *See Warshaw v. Xoma Corp.*, 74 F.3d 955,
24 957 (9th Cir. 1996). Allegations in a *pro se* complaint are held to
25 less stringent standards than formal pleadings drafted by lawyers.

1 See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S.
2 519, 520-21 (1972) (*per curiam*).

3 Jackson was given leave to file an amended complaint, which
4 he has now done. Docket #7. In his amended complaint, Jackson names
5 Foster, Doakes, two SDCC correctional officers who were allegedly
6 present when the injury occurred, and two medical personnel at High
7 Desert State Prison (HDSP), where Jackson was sent for treatment. *Id.*
8 Having reviewed the amended complaint pursuant to 28 U.S.C. § 1915(e),
9 the court finds that Jackson has stated cognizable § 1983 claims
10 against the SDCC correctional officers based on their alleged failure
11 to protect and against the HDSP medical personnel based on their
12 alleged failure to provide adequate medical treatment. See *Farmer v.*
13 *Brennan*, 511 U.S. 825, 833-40 (1994); *Estelle v. Gamble*, 429 U.S. 97,
14 106 (1976).

15 With respect to Doakes, Jackson alleges that the NDOC hired
16 him to work as a boxing trainer at the prison. In light of the less
17 stringent standards applicable to *pro se* litigants, this allegation
18 is sufficient to establish that Doakes was acting under color of state
19 law for the purpose of stating a § 1983 claim. See, *Price v. Hawaii*,
20 939 F.2d 702, 707-08 (9th Cir. 1991); *United States ex rel. Miller v.*
21 *Twomey*, 479 F.2d 701, 719 (7th Cir. 1973). Thus, Jackson's § 1983
22 claim against Doakes, alleging excessive force, survives Rule 12(b)(6)
23 screening. See *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992).

24 As for his claim against Foster, Jackson alleges in his
25 amended complaint that she knowingly disregarded an excessive risk to
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1 his safety by allowing an inmate who was a professional fighter to
2 train other inmates in a boxing ring without adequate supervision.
3 Viewed liberally, his allegations are sufficient to state a § 1983
4 claim based on the warden's Eighth Amendment duty to protect. See
5 *Farmer, supra*. However, his other claim against Foster - i.e., that
6 she violated the Excessive Fines Clause of the Eighth Amendment - is
7 misguided. The claim fails because that constitutional provision
8 applies only to fines imposed as punishment; whereas, Jackson seeks
9 relief based on the fact that he has been billed for medical costs.
10 See *Wright v. Riveland*, 219 F.3d 905, 915 (9th Cir. 2000).

11 Lastly, Jackson makes reference in his amended complaint to
12 the existence of a conspiracy among the defendants to violate his
13 constitutional rights. It is not clear whether this allegation was
14 included as an alternative basis for imposing liability or, perhaps
15 as a way to show that Doakes was acting under color of state law. In
16 either case, "[a] mere allegation of conspiracy without factual
17 specificity is insufficient." *Karim-Panahi v. Los Angeles Police*
18 *Dep't*, 839 F.2d 621, 626 (9th Cir. 1988); see also, *Price, supra*.
19 Jackson has not met the heightened pleading standard that applies to
20 conspiracy allegations.

21 In summary, Jackson has stated cognizable § 1983 claims,
22 grounded in the Eighth Amendment, against each of the named
23 defendants. However, a portion of his amended complaint shall be
24 dismissed for the reasons stated above. In accordance with 28 U.S.C.

1 § 1915(d), the court will assist Jackson with service of his amended
2 complaint.

3 **IT IS THEREFORE ORDERED** that the portions of Count III of
4 the plaintiff's amended complaint (docket #7) that allege a violation
5 of the Eighth Amendment's Excessive Fines Clause and that allege a
6 conspiracy to violate his constitutional rights are **DISMISSED**.

7 **IT IS FURTHER ORDERED** that the Clerk shall **send** a courtesy
8 copy of this order and the amended complaint (docket #7) to the
9 Attorney General's Office of the State of Nevada, attention: Carol
10 Sweeney. The Attorney General shall advise the court within twenty
11 (20) days whether they can accept service of process for the named
12 defendants. Counsel shall within sixty (60) days file an answer or
13 otherwise respond to the complaint. If service cannot be accepted for
14 any of these named defendants, then plaintiff will need to file a
15 motion identifying the unserved defendant(s), requesting the issuance
16 of a summons, and specifying a full name and address for said
17 defendant. Plaintiff is advised that, pursuant to Rule 4(m) of the
18 Federal Rules of Civil Procedure, service must be accomplished within
19 one hundred twenty (120) days of the date this order is entered.

20 **IT IS FURTHER ORDERED** that henceforth, plaintiff shall serve
21 upon defendant(s) or, if appearance has been entered by counsel, upon
22 the attorney(s), a copy of every pleading, motion or other document
23 submitted for consideration by the court. Plaintiff shall include
24 with the original paper submitted for filing a certificate stating the
25 date that a true and correct copy of the document was mailed to the
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1 defendant(s) or counsel for the defendant(s). The court may disregard
2 any paper received by a district judge or magistrate judge which has
3 not been filed with the Clerk, and any paper received by a district
4 judge, magistrate judge or the Clerk which fails to include a
5 certificate of service.

6 **IT IS FURTHER ORDERED** that plaintiff's "Ex Parte Motion For
7 Appointment Of Counsel" (docket #8) is **DENIED**.

8 Dated, this 14th day of November, 2005.

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11 UNITED STATES DISTRICT JUDGE
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